IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8227 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

BC PATEL

Versus

REGISTRAR, HIGH COURT OF GUJ.

Appearance:

1. Special Civil Application No. 8227 of 1997

MR IS SUPEHIA for Petitioner No. 1

MR RC KODEKAR AGP for State

MR JB PARDIWALA Standing Counsel for High Court of Gujarat.

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 22/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA for the Court:)

1. By this petition under Article 226 of the Constitution, the petitioner, a former Civil Judge (J.D.), has prayed to set aside the order by which he was denied pay and other allowances for the period during which he was suspended. The relevant facts in brief are that the petitioner was alleged to have demanded an amount of Rs.3,000/- towards bribe through a local advocate for acquitting an accused person and a departmental enquiry on that basis was initiated. Pending the enquiry, he was suspended with effect from 1.5.1993. During the course of departmental enquiry, the complaining advocate and the witnesses did not support the case in their cross-examination and it was concluded that the charges levelled against the delinquent were not proved. It was fairly conceded at the outset by the learned counsel for the petitioner that, in the facts of the present case, it was not the contention of the petitioner that the order of suspension was wholly unjustified when it was made.

2. The learned counsel, however, vehemently argued that, in view of the ultimate exoneration of the petitioner, he was entitled to full wages and all other allowances in view of the fact that no punishment whatsoever was imposed on the basis of the charges which were levelled and on the basis of which the order of suspension was also made. He submitted that in case of full exoneration, the delinquent was entitled to all the benefits including full pay and allowances to which he would have been entitled if he had not been suspended. The learned counsel relied upon the provisions of Rule 152 of the Bombay Civil Services Rules, 1959, the relevant part of which reads as under:

"R.152 (1) When a Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule

(1) is of opinion that the Government servant has been fully exonerated or in the case of suspension that it was wholly unjustified the government servant shall be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be.

(3) xxx xxx xxx
(4) xxx xxx xxx
(5) xxx xxx xxx"

3. Having regard to the clear language of the Rule and the concession that the order of suspension was not wholly unjustified when it was made, it was further submitted by the learned counsel Mr.Supehia that the provision did not provide for sufficient guidelines for deciding the issue of wages and allowances during the period of suspension. In support of this submission, the learned counsel relied upon the judgment of the Supreme Court in UNION OF INDIA v. K.V.JANAKIRAMAN [AIR 1991 SC 2010] and emphasized the observations as under:-

"There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post......."

It is, however, observed in the same judgment that:-

"However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they

exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests."

4. Besides the above observations in JANKIRAMAN (supra), it is categorically held by the Supreme Court in KRISHNAKANT RAGHUNATH BIBHAVNEKAR v. STATE OF MAHARASHTRA [AIR 1997 SC 1434] that:

".....The authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period not on duty.....When the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the affidavit."

5. Referring to the rules applicable in the respective cases, the Supreme Court has taken a similar view in DEPOT MANAGER, ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION v. V.VENKATESWARULU [AIR 1995 SC 258] and in the MANAGEMENT OF RESERVE BANK OF INDIA v. BHOPAL SINGH PANCHAL [AIR 1994 SC 552]. It is further observed in the latter judgment that the regulations vested the power exclusively in the management to treat the period of suspension on duty or on leave or otherwise and the power thus vested could not have been validly challenged.

6. In the facts of the present case and in view of the well-settled legal position as observed hereinabove, it is obvious that the petitioner could not have legally claimed full pay and other allowances for the period of suspension only on the ground that he was exonerated at the end of the enquiry held against him. The challenge to the provision itself on the ground that it does not provide for any guidelines in the matter of forming an opinion as regards the suspension being wholly unjustified or justified has no substance for the simple reason that the question of suspension being wholly unjustified or justified would depend upon the facts of each case and there cannot be an inflexible rule or an exhaustive guideline to determine the same. That

question also does not arise in the present case in view of the fair concession that the suspension of the petitioner was not wholly unjustified when it was ordered. In these facts, the petition having no substance and no case having been made out to quash the impugned order, it is rejected and Rule is discharged with no order as to costs.

Sd/-

(R.K.Abichandani, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)